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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,425	10/29/2003	Terri Webb	S7150.109US1	7727
25541	7590	10/20/2004	EXAMINER	
NEAL, GERBER, & EISENBERG SUITE 2200 2 NORTH LASALLE STREET CHICAGO, IL 60602			CHIN, PAUL T	
		ART UNIT	PAPER NUMBER	
		3652		

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/697,425	WEBB ET AL. <i>ST</i>
	Examiner PAUL T. CHIN	Art Unit 3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 October 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 29 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/29/03.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement (IDS) submitted on October 29, 2003, was filed and submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner. However, the photocopies of the non-patent documents are unreadable and they are crossed out and not considered. Moreover, some of the patents are crossed out and not considered because they are not closely related to the application.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3,6,9,11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Benezet et al. (2,641,496).

Benezet et al. (2,641,496) discloses a food handling apparatus comprising a pair of substantially identical members (10,10), where each member comprises a generally flat surface having a top and a bottom, a straight edge (9) formed at a first side of the generally flat surface, the straight edge having a first end and a second end, a handle (7) located on a second side of the generally flat surface opposite to the first side, a first arcuate surface extending between the first end of the straight edge and the handle and a second arcuate surface extending between the second end of the straight edge and the handle.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4,5,7,10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benezet et al. (2,641,496).

Benezet et al. (2,641,496), as presented in section 3 above, does not show the structural, dimensional limitations (4 mm thickness) and the material (glass reinforced nylon) being made. However, it would have been obvious design choice to those skilled in the art to provide 4 mm thickness and glass reinforced nylon on the Benezet et al. (2,641,496) in order to provide a reasonable thickness with a light, but strong device.

6. Claims 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benezet et al. (2,641,496) in view of Leung (Des. 286,608).

Benezet et al. (2,641,496), as presented in section 3 above, still does not show an indicia. However, Leung (Des. 286,608) shows a food scoop having an indicia. Accordingly, it would have been obvious design choice to those skilled in the art to provide an indicia on the Benezet et al. (2,641,496) as taught Leung (Des. 286,608) in order to mark and identify the edge of the apparatus.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (703) 305-1524. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (703) 308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



PAUL T. CHIN  
Examiner  
Art Unit 3652